

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT
for theUnited States District Court
Southern District of Texas
FILED

DEC 20 2013

David J. Bradley, Clerk

JOSE VICENTE HERNANDEZ-DE AZA,
Petitioner

v.

Case No.

M-13-1794

(Supplied by Clerk of Court)

BOP, RCDC#3, MR MARTINEZ (LWADN)
Respondent

(name of warden or authorized person having custody of petitioner)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: JOSE VICENTE HERNENDEZ-DE AZA,
(b) Other names you have used: NOME
2. Place of confinement:
(a) Name of institution: REEVES COUNTY DETENTION CENTER #3
(b) Address: P.O. BOX. 2038
PECOS, TEXAS 79772
(c) Your identification number: #10276379
3. Are you currently being held on orders by:
☐ Federal authorities ☐ State authorities ☐ Other - explain:
4. Are you currently:
☐ A pretrial detainee (waiting for trial on criminal charges)
☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you: 1011 BENTSEN TOWER
#1701 WEST BUSINESS HIGHWAY 83
(b) Docket number of criminal case: 7:12-CR-580-1
(c) Date of sentencing: FRIDAY, AUGUST 31, 2012
☒ Being held on an immigration charge
☐ Other (explain): 8 U.S.U. §1326 ILLEGAL RE-ENTRY INTO THE UNITED
STATES AFTER DEPORTATION.

RAH
PEO

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Decision or Action You Are Challenging

5. What are you challenging in this petition:

☒ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

☐ Pretrial detention

☐ Immigration detention

☐ Detainer

☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)

☐ Disciplinary proceedings

☐ Other (*explain*):

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court:

(b) Docket number, case number, or opinion number:

(c) Decision or action you are challenging (*for disciplinary proceedings, specify the penalties imposed*):

(d) Date of the decision or action:

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☐ Yes

☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

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(b) If you answered "No," explain why you did not appeal: _____

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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(b) If you answered "No," explain why you did not file a third appeal:

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

(1) Name of court:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

(1) Name of court:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

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- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____
- _____
- _____
- _____
- _____
- _____
- _____

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☐ Yes ☒ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: _____
- (b) Date of the removal or reinstatement order: _____
- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes ☒ No

If "Yes," provide:

- (1) Date of filing: _____
- (2) Case number: _____
- (3) Result: _____
- (4) Date of result: _____
- (5) Issues raised: _____
- _____
- _____
- _____
- _____

- (d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes ☒ No

If "Yes," provide:

- (1) Name of court: _____
- (2) Date of filing: _____
- (3) Case number: _____

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- (4) Result: _____
(5) Date of result: _____
(6) Issues raised: _____

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes ☒ No

If "Yes," provide:

- (a) Kind of petition, motion, or application: _____
(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____
(d) Docket number, case number, or opinion number: _____
(e) Result: _____
(f) Date of result: _____
(g) Issues raised: _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: _____

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(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes

☐ No

GROUND TWO:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes

☐ No

GROUND THREE:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes

☐ No

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GROUND FOUR:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do:

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Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: Dec/17/2013

JOSE Hernandez de AZA
Signature of Petitioner

Signature of Attorney or other authorized person, if any

ATTACHMENT
PETITIONER'S REQUEST FOR RELIEF

Herein, this Honorable United States District Court, for the Western District of Texas, NOW COMES I, jose vicente hernandez the above and undersigned petitioner, and respectfully request the court to effect his Early Release from confinement, pursuant to the Federal Prison Bureau Non-Violent Offender Release Act of 2003; and the November 1, 2011 Amended Act 5H1.1.

It is provided under said Act, that notwithstanding any provision (s) of law, the Bureau of Prison may release from confinement, a prisoner whom has served one-half or more of his imposed term of imprisonment, if that prisoner:

- 1) has attained the age of 43 years; old;
- 2) has never being convicted of a crime of violence; and
- 3) has not engaged in any violation(s), involving violent conduct, or institutional disciplinary regulations.

Petitioner was born on dominican republic and have now attained the age of 43 years old. He also have conducted himself on a remarkable exemplary level, during these periods of his incarceration: Conforming to prison rules; and continues to utilize the means available to him to rehabilitate himself, preparing to live and maintain a law abiding life in society after his release from prison. He has participated in, and successfully completed institution's Parenting and Anger Management courses, and currently he is attending Vocational-Technical Trades Program (Building Trades).

Beyond a shadow of doubt, it is clear that petitioner substantially satisfies and meets the established requirements of the Federal Bureau Non-Violent Offender Relief Act of 2003; the November 1, 2011 Amended Act 5H1.1. And for that reason, he now petition this Honorable United States District court, for the Western District of Texas, having jurisdiction and authority in this matter, to grant him the requested Early Release from confinement; or whatsoever relief from his confinement this court deems he deserves.

Respectfully Submitted, this th day of December, 2013, by the petitioner,

JOSE Hernandez DE 124.
Petitioner's Signature

RV SAY	540*23 *	SENTENCE MONITORING	*	12-16-2013
PAGE	001 *	COMPUTATION DATA	*	09:19:38
		AS OF 12-16-2013		

REGNO...: 10276-379 NAME: HERNANDEZ-DE AZA, JOSE VICENTE

FBI NO.....: 819287DB6	DATE OF BIRTH: 06-22-1970	AGE: 43
ARS1.....: RVS/A-DES		
UNIT.....: UNIT B	QUARTERS.....: B04-011L	
DETAINEES.....: YES	NOTIFICATIONS: NO	

HOME DETENTION ELIGIBILITY DATE: 11-24-2015

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.
THE INMATE IS PROJECTED FOR RELEASE: 05-14-2016 VIA GCT REL

-----CURRENT JUDGMENT/WARRANT NO: 010 -----

COURT OF JURISDICTION.....: TEXAS, SOUTHERN DISTRICT
DOCKET NUMBER.....: 7:12CR00580-001
JUDGE.....: ALVAREZ
DATE SENTENCED/PROBATION IMPOSED: 08-31-2012
DATE COMMITTED.....: 11-07-2012
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED..:	\$100.00	\$00.00	\$00.00	\$00.00

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: \$00.00

-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE....: 171
OFF/CHG: 8:1326(A)&1326(B) . BEING FOUND IN THE U.S. AFTER PREVIOUS
DEPORTATION.

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE
SENTENCE IMPOSED/TIME TO SERVE.: 57 MONTHS
DATE OF OFFENSE.....: 03-26-2012

G0002 MORE PAGES TO FOLLOW . . .

RVSAY 540*23 *	SENTENCE MONITORING	*	12-16-2013
PAGE 002 *	COMPUTATION DATA	*	09:19:38
	AS OF 12-16-2013		

REGNO...: 10276-379 NAME: HERNANDEZ-DE AZA, JOSE VICENTE

-----CURRENT COMPUTATION NO: 010 -----

COMPUTATION 010 WAS LAST UPDATED ON 11-07-2012 AT RVS AUTOMATICALLY

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
CURRENT COMPUTATION 010: 010 010

DATE COMPUTATION BEGAN.....: 08-31-2012
TOTAL TERM IN EFFECT.....: 57 MONTHS
TOTAL TERM IN EFFECT CONVERTED...: 4 YEARS 9 MONTHS
EARLIEST DATE OF OFFENSE.....: 03-26-2012

JAIL CREDIT.....	FROM DATE	THRU DATE
	03-26-2012	08-30-2012

TOTAL PRIOR CREDIT TIME.....: 158
TOTAL INOPERATIVE TIME.....: 0
TOTAL GCT EARNED AND PROJECTED...: 223
TOTAL GCT EARNED.....: 54
STATUTORY RELEASE DATE PROJECTED: 05-14-2016
EXPIRATION FULL TERM DATE.....: 12-23-2016
TIME SERVED.....: 1 YEARS 8 MONTHS 23 DAYS
PERCENTAGE OF FULL TERM SERVED...: 36.3

PROJECTED SATISFACTION DATE.....: 05-14-2016
PROJECTED SATISFACTION METHOD....: GCT REL

G0002 MORE PAGES TO FOLLOW . . .

RV SAY 540*23 *	SENTENCE MONITORING	*	12-16-2013
PAGE 003 OF 003 *	COMPUTATION DATA	*	09:19:38
	AS OF 12-16-2013		

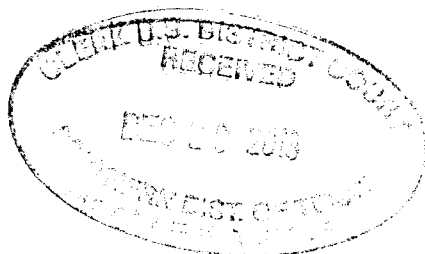
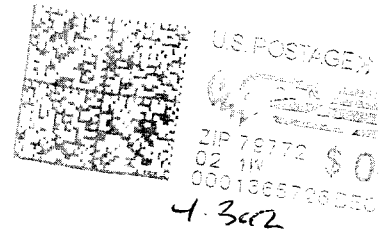
REGNO...: 10276-379 NAME: HERNANDEZ-DE AZA, JOSE VICENTE

----- CURRENT DETAINERS: -----

DETAINER NO...: 001
DATE LODGED...: 11-07-2012
AGENCY.....: IMMIGRATION & NATURALIZATION
AUTHORITY....: IMMIGRATION AND CUSTOMS ENFORCEMENT
CHARGES.....: POSSIBLE DEPORTATION

G0000 TRANSACTION SUCCESSFULLY COMPLETED

JOSE VICENTE HERNANDEZ-DE ASA,
#10276379
R.C.D.C. # III
P.O BOX. 2038
PECOS. TEXAS 79772



1011 BENTSEN TOWER
1701 WEST BUSINESS HIGHWAY 8
MCALLEN, TEXAS. 78501